

1
2 BILL NO. G-96-03-23 (AS AMENDED)

3 ZONING MAP ORDINANCE NO. G- 13-96

4 AN ORDINANCE amending
5 Chapter 157 of the City of Fort Wayne
6 Code of Ordinance.

7 WHEREAS, a public hearing was held on the 15th day of April, 1996, pursuant to Notice given as
8 required by law and as specifically set forth in I.C. 36-7-4-604, on the question of amending Chapter 157,
9 Section 157.033 of the Fort Wayne Code of Ordinances; and,

10 WHEREAS, said proposed amendment to the aforementioned Fort Wayne Code of Ordinances has
11 been duly certified by the Plan Commission of the City of Fort Wayne with a DO PASS, as amended,
12 recommendation.

13 NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF FORT
14 WAYNE, INDIANA:

15 SECTION 1. That Chapter 157, Section 157.033(F)(14)(a)(2) of the City of Fort Wayne Code of
16 Ordinances shall be amended as follows:

17 (14) Permits.

18 (a) Amendments to development plan:

19

20 (2). If an application shows that additional land is to be improved or
21 used in connection with such shopping center permit, then the Commission shall proceed as in the
22 case of the original application for a shopping center improvement location permit. However, the
23 application for approval of an amended primary development plan needs to be signed only by the
24 original developer (or the developer's successor). The applicant shall give notice by certified U.S. mail
25 of the filing of the application to all of the other owners of property in the development, or within the
26 B-2 zoning district if the zoning district boundary extends beyond the boundaries of the development
27 plan. Notice shall be given at least ten (10) days prior to the Plan Commission public hearing on the
28 proposed amended development plan.

29 SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and
30 approval by the Mayor.


Councilmember

APPROVED AS TO FORM AND LEGALITY:


TIMOTHY MCCAULAY, CITY ATTORNEY

BILL NO. ~~X~~-96-03-23
6

GENERAL ORDINANCE NO. _____

AN ORDINANCE AMENDING
CHAPTER 157 OF THE CITY OF FORT WAYNE
CODE OF ORDINANCES

WHEREAS, a public hearing was held on the _____ day of _____, 1996, pursuant to Notice given as required by law and as specifically set forth in I.C. 36-7-4-604, on the question of amending Chapter 157, Section 157.033 of the Fort Wayne Code of Ordinances; and

WHEREAS, said proposed amendment to the aforementioned Fort Wayne Code of Ordinances has been duly certified by the Plan Commission of the City of Fort Wayne with a _____ recommendation.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That Chapter 157, Section 157.033(F)(14)(a)(2) of the City of Fort Wayne Code of Ordinances shall be amended as follows:

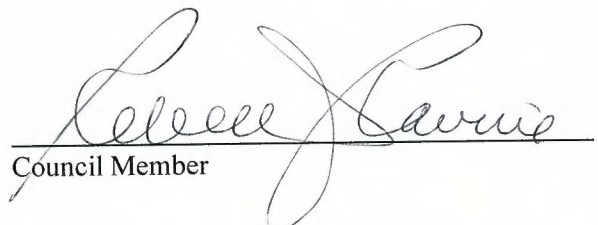
(14) Permits.

(a) Amendments to development plan:

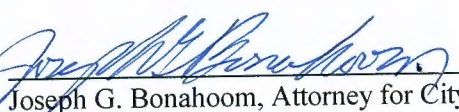
...

2. If an application shows that additional land is to be improved or used in connection with such shopping center permit, then the Commission shall proceed as in the case of the original application for a shopping center improvement location permit. However, the application for approval of an amended primary development plan needs to be signed only by the original developer of the development (or the developer's successor), and the applicant shall give notice by certified U.S. mail, of the filing of the application to all owners (other than the applicant) of property in the development at least ten days before the Plan Commission conducts a hearing on the proposed amended development plan.

SECTION 2. That this Ordinance shall remain in full force and effect from and after its passage and any and all necessary approval by the Mayor.


Council Member

APPROVED AS TO FORM AND LEGALITY


Joseph G. Bonahoom, Attorney for City Council

and duly adopted, read the second time, by title and referred to the Committee on Regulations (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19____, at _____ o'clock _____ M., E.S.T.

DATED: 3-26-96

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Ravine and duly adopted, placed on its passage. PASSED LOST by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>6</u>	<u>1</u>		<u>2</u>
BENDER	<u>✓</u>			
CRAWFORD	<u>✓</u>			
EDMONDS				<u>✓</u>
HALL		<u>✓</u>		
HAYHURST	<u>✓</u>			
HENRY	<u>✓</u>			
LUNSEY				<u>✓</u>
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			

DATED: 5-28-96

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)

(SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. 9-13-96

on the 28th day of May, 1996

ATTEST:

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

(SEAL)
DD Schmidt
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 29 day of May, 1996, at the hour of 11:00 o'clock A. M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 31st day of May, 1996, at the hour of 11:00 o'clock P M., E.S.T.

PAUL HELMKE
PAUL HELMKE, MAYOR

RESOLUTION OF ZONING ORDINANCE TEXT AMENDMENT RECOMMENDATION

WHEREAS, the Common Council of the City of Fort Wayne, Indiana, on March 26, 1996 referred a proposed text amendment which proposed amendment was designated as Bill No. G-96-03-23; and,

WHEREAS, the required notice of public hearing on such proposed amendment has been published as required by law; and,

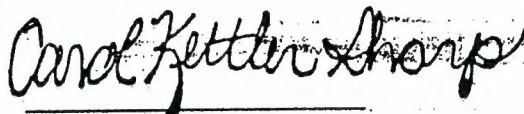
WHEREAS, the City Plan Commission conducted a public hearing on such proposed amendment on April 15, 1996.

NOW THEREFORE, BE IT RESOLVED that the City Plan Commission does hereby recommend that this amendment be returned to the Common Council with a **DO NOT PASS** recommendation based on the Commission's following "Findings of Fact".

BE IT FURTHER RESOLVED that the Secretary is hereby directed to present a copy of this resolution to the Common Council at its next regular meeting.

This is to certify that the above is a true and exact copy of a resolution adopted at the meeting of the Fort Wayne City Plan Commission held May 20, 1996.

Certified and signed this
24th day of May 1996.



Carol Kettler Sharp
Secretary

FACT SHEET

G-96-03-23

BILL NUMBER

Division of Community Development & Planning

BRIEF TITLE

APPROVAL DEADLINE

REASON

Zoning Ordinance Amendment

DETAILS

POSITIONS

RECOMMENDATIONS

<p>Specific Location and/or Address</p> <p style="text-align: center;">N/A</p>	
<p>Reason for Project</p> <p>Approval of the amendment would allow for any property owner within a B2 District to file an amendment to an approved secondary <i>primary</i> development plan provided that they place on notice, by certified receipt mail, all of the other owners of record of the real estate contained in the development.</p>	
<p>Discussion (Including relationship to other Council actions)</p> <p><u>15 April 1996 - Public Hearing</u></p> <p>See Attached Minutes of Meeting</p> <p><u>22 April 1996 - Business Meeting</u></p> <p>Deferred by Plan Commission to the June 3, 1996 Business Meeting.</p> <p><u>20 May 1996 - Public Hearing</u></p> <p>Item was placed on the agenda as an Administrative Item at the request of James Federhoff, attorney for Duane Bobeck. Request for review and action of the item was made in letter form to Ernest Evans, President of the Commission.</p> <p>Motion was made and seconded to return the ordinance to the Common Council with a DO NOT PASS recommendation.</p> <p>Of the seven (7) members present, five voted in favor of the recommendation, two (2) voted against the recommendation.</p> <p>Motion carried.</p>	

<p>Sponsor</p>	<p>City Plan Commission</p>
<p>Area Affected</p>	<p>City Wide</p> <p>Other Areas</p>
<p>Applicants/ Proponents</p>	<p>Applicant(s)</p> <p>City Council</p> <p>City Department</p> <p>Other</p>
<p>Opponents</p>	<p>Groups or Individuals</p> <p>Timothy Pape, atty for Wal-Mart</p> <p>Basis of Opposition</p>
<p>Staff Recommendation</p>	<p><input checked="" type="checkbox"/> For <input type="checkbox"/> Against</p> <p style="text-align: center;">Reason Against</p>
<p>Board or Commission Recommendation</p>	<p>By</p> <p><input type="checkbox"/> For <input checked="" type="checkbox"/> Against</p> <p><input type="checkbox"/> No Action Taken</p> <p><input type="checkbox"/> For with revisions to conditions (See Details column for conditions)</p>
<p>CITY COUNCIL ACTIONS (For Council use only)</p>	<p><input type="checkbox"/> Pass <input type="checkbox"/> Other</p> <p><input type="checkbox"/> Pass (as amended) <input type="checkbox"/> Hold</p> <p><input type="checkbox"/> Council Sub. <input type="checkbox"/> Do not pass</p>

Members Present: Linda Buskirk, Ernest Evans,
DeDeHall, James Hoch, Richard Pierce, Thomas
Quirk, Carol Kettler Sharp

Member Absent: Dave Ross

Member Absent: Dave Ross

Policy or Program Change	<input type="checkbox"/> No <input type="checkbox"/> Yes
Operational Impact Assessment	

(This space for further discussion)

Date 24 May 1996

Reference or Case Number

RESOLUTION OF ZONING ORDINANCE TEXT AMENDMENT RECOMMENDATION

WHEREAS, the Common Council of the City of Fort Wayne, Indiana, on March 26, 1996 referred a proposed text amendment which proposed amendment was designated as Bill No. G-96-03-23; and,

WHEREAS, the required notice of public hearing on such proposed amendment has been published as required by law; and,


WHEREAS, the City Plan Commission conducted a public hearing on such proposed amendment on April 15, 1996.

NOW THEREFORE, BE IT RESOLVED that the City Plan Commission does hereby recommend that this amendment be returned to the Common Council with a **DO NOT PASS** recommendation based on the Commission's following "Findings of Fact".

BE IT FURTHER RESOLVED that the Secretary is hereby directed to present a copy of this resolution to the Common Council at its next regular meeting.

This is to certify that the above is a true and exact copy of a resolution adopted at the meeting of the Fort Wayne City Plan Commission held May 20, 1996.

Certified and signed this
24th day of May 1996.

A handwritten signature in cursive script that reads "Carol Kettler Sharp". The signature is written in dark ink and is positioned above a horizontal line.

Carol Kettler Sharp
Secretary

FACT SHEET

G-96-03-23

BILL NUMBER

Division of Community Development & Planning

BRIEF TITLE

Zoning Ordinance Amendment

APPROVAL DEADLINE

REASON

DETAILS

Specific Location and/or Address

N/A

Reason for Project

Approval of the amendment would allow for any property owner within a B2 District to file an amendment to an approved primary development plan provided that they place on notice, by certified receipt mail, all of the other owners of record of the real estate contained in the development.

Discussion (Including relationship to other Council actions)

15 April 1996 - Public Hearing

See Attached Minutes of Meeting

22 April 1996 - Business Meeting

Deferred by Plan Commission to the June 3, 1996 Business Meeting.

20 May 1996 - Public Hearing

Item was placed on the agenda as an Administrative Item at the request of James Federhoff, attorney for Duane Bobeck. Request for review and action of the item was made in letter form to Ernest Evans, President of the Commission.

Motion was made and seconded to return the ordinance to the Common Council with a DO NOT PASS recommendation.

Of the seven (7) members present, five voted in favor of the recommendation, two (2) voted against the recommendation.

Motion carried.

POSITIONS

RECOMMENDATIONS

Sponsor

City Plan Commission

Area Affected

City Wide

Other Areas

Applicants/
Proponents

Applicant(s)

City Council
City Department

Other

Opponents

Groups or Individuals

Timothy Pape, atty for
Wal-Mart
Basis of Opposition

Staff
Recommendation

☒ For ☐ Against

Reason Against

Board or
Commission
Recommendation

By

☐ For ☒ Against
☐ No Action Taken

☐ For with revisions to conditions
(See Details column for conditions)

CITY COUNCIL
ACTIONS
(For Council
use only)

☐ Pass ☐ Other
☐ Pass (as amended) ☐ Hold
☐ Council Sub. ☐ Do not pass

embers Present: Linda Buskirk, Ernest Evans,
eDeHall, James Hoch, Richard Pierce, Thomas
uirk, Carol Kettler Sharp

ember Absent: Dave Ross

Member Absent: Dave Ross

Policy or Program Change	<input type="checkbox"/> No <input type="checkbox"/> Yes
Operational Impact Assessment	

(This space for further discussion)

Reference or Case Number

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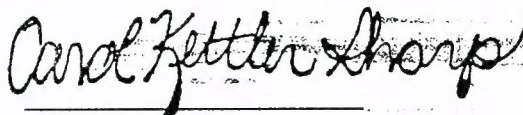
WHEREAS, the City Plan Commission conducted a public hearing on such proposed amendment on April 15, 1996.

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BE IT FURTHER RESOLVED that the Secretary is hereby directed to present a copy of this resolution to the Common Council at its next regular meeting.

This is to certify that the above is a true and exact copy of a resolution adopted at the meeting of the Fort Wayne City Plan Commission held May 20, 1996.

Certified and signed this
24th day of May 1996.



Carol Kettler Sharp
Secretary

- a. Bill No. G-96-03-23 - Amendment #611
Section 157.033(F)(14)(a)(2) of the Zoning Ordinance, (B2 District, Planned Shopping Center/Amendments to development plan) shall be amended relative to the signatures required for the application for approval of an amended primary development.

Pat Fahey, Senior Planner with C&ED appeared before the Commission. Mr. Fahey stated that currently in the zoning ordinance there are a number of provisions in a planned shopping center district that deal with development submission review and approval. He stated that one of those provisions involves, what needs to happen if a previously approved shopping center wishes to expand by adding additional ground to the previously approved development plan. Mr. Fahey stated that last fall the staff was approached by the owner of Apple Glen property. He stated that they wanted to add some additional ground to the existing shopping center zoning and development plan. He stated that they want to incorporate a small parcel and ask to rezone that, amend the previously approved development plan and submit that amended development plan to the Commission for review and consideration, along with the rezoning request. He stated that the review of the zoning ordinance determined that to do that would require the signatures on the development plan application of all of the owners of record of the property within the development plan. At that point the developer had sold off part of the property to Wal-Mart. He stated that the developer was advised that they would have to get the signature of the representative of the Wal-Mart on the development plan, before the staff would be able to accept it and place it on the agenda for a public hearing. Apparently, there has been difficulty in doing that and it has been over six months and the developer has been unable to acquire the signature from a representative of Wal-Mart. As a result, the project has not been placed on the agenda for a hearing. The owner of the property (Apple Glen) contacted several members of City Council. State law allows City Council to initiate a zoning ordinance amendment, they also have the ability to recommend an amendment and have the Plan Commission prepare the amendment. He stated that Council prepared a zoning ordinance amendment and forwarded the amendment to the Commission for their consideration. He stated that this is an area that staff has reviewed previously and the staff was going to look at amending this section as part of a larger review of the Permitted Uses section of the ordinance. Basically, because of Council's action, the Commission now has a smaller text amendment before them. The intent of that amendment is that in cases where additional ground is desired to be incorporated into a previously approved shopping center development plan, the application itself would just need to be signed by the developer and the developer would be required to give notice by certified mail, of the application, to all of the other owners of the properties, in the development or within the B2 zoning district. He stated that quite often there are shopping center zoning districts that are larger than the development plan that has been approved. He stated that the staff has revised, slightly, the language that was prepared by City Council's attorney. He stated that the proposed language does establish that the application itself would be signed only by the original developer, or the developer's successor, and that the applicant shall give notice by certified mailing to all of the owners of property within the development. He stated that they did add "or within the B2 zoning district, if the zoning district boundaries extends beyond the boundaries of the development plan". He stated that they also made several minor language changes to the proposed text amendment. He stated that the staff feels that it is an issue that needs to be addressed. He stated that the current provision is rather restrictive and does create situations where for whatever reason, if someone decides not to sign the development plan application, that owner can prevent that development plan from being amended. He stated that staff does have concerns about the provision as far as it concerns due process for an applicant to submit a plan. He stated that the staff is in agreement that the section should be amended and would

ask the Commission to consider the amendment, as amended, as presented.

Dede Hall asked when this came before Council.

Mr. Fahey stated that it was introduced before Council several weeks ago.

Dede Hall questioned if they know, or are they supposed to care, why Wal-Mart refused to sign.

Mr. Fahey stated that he believed there was some disputes between the two property owners. He stated that he is not aware that the disputes affect the property that is being requested to be rezoned as part of the center.

Linda Buskirk questioned if the idea of the amendment was, at least to allow the request to get to the table for discussion. She questioned if it would then allow someone to speak against the request.

Mr. Fahey stated that is correct. He stated that in any case where you are going to add ground, it would have to go to a public hearing.

Mr. Pierce questioned why the ordinance was drafted this way originally.

Mr. Fahey stated he could not comment on that. He stated that there are some sections in the B2 district that he feel are a little awkward and they will be bringing an amendment of that section to the Commission.

Jim Federhoff, attorney, representing the developers appeared before the Commission. Mr. Federhoff stated that he was there merely to indicate their support to the slight modification to the ordinance as proposed. He stated that they felt the modifications were appropriate. He stated that they are supporting the amendment to allow the requested amendment to the Apple Glen Shopping Center to at least get before the Commission.

Timothy Pape, attorney, representing Wal-Mart, appeared before the Commission. Mr. Pape stated that he was there to voice their opposition to the amendment. He stated that the purpose of the existing amendment is to provide protection for landowners who invest in the city. He stated that the obvious effect of not having the consent of the existing landowners, is that they will effectively be unsure of what the future development is going to entail. He stated that it is unusual that a shopping center expands beyond their original development plan. He stated that when a company like Wal-Mart comes into Fort Wayne, they are not familiar with the terrain and they expect certain protection. He stated that Wal-Mart is strongly opposed, not only to the amendment, but to the way the amendment has come about. He stated that they feel it is somewhat inappropriate that it come before the Commission at this time. He stated that as Mr. Fahey pointed out the amendment was to come up as an amendment to the whole section (Permitted Uses). But, because of a private party and his connections in the city, it was able to come before the Commission at this time. He stated that this is inappropriate, not only for future landowners and investors, but it is inappropriate for the consequences of this case.

In rebuttal, Pat Fahey stated that the intent of this amendment is not to harm or help anyone. It is merely to allow an amendment to be considered by the Plan Commission. If there are concerns about the amendment, the process is to voice those concerns to the Commission at

the public hearing. He stated that as the ordinance, as it stands now, does give leeway to anyone who chooses not to sign a development plan application. It automatically prevents any amendment from coming to the Commission. He stated that he felt this amendment would really correct an imbalance that now exists in that section of the ordinance.

There was no one else present who wished to speak in favor of or in opposition to the proposed amendment.

BILL NO. G-96-03-23 (as amended)

REPORT OF THE COMMITTEE ON
REGULATIONS
REBECCA J. RAVINE - THOMAS E. HAYHURST - CO-CHAIR
ALL COUNCIL MEMBERS

WE, YOUR COMMITTEE ON Regulations TO WHOM WAS
REFERRED AN (ORDINANCE) (~~RESOLUTION~~) amending Chapter 157 of the
City of Fort Wayne Code of Ordinance

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) (~~RESOLUTION~~)

DO PASS

DO NOT PASS

ABSTAIN

NO REC

<u>Rebecca Ravine</u>	<u>Richard Hall</u>		
<u>Martin A. Bender</u>	<u>Detmo R. Edmonds</u>		
<u>John W. Campbell</u>			
<u>Thomas E. Hayhurst</u>			
<u>D. S. [Signature]</u>			
<u>[Signature]</u>			

DATED: 5-28-96

Sandra E. Kennedy
City Clerk